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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,344	01/25/2002	Won Kyu Kim	1599-0212P	9311

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EXAMINER

PATTEN, PATRICIA A

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,344

Applicant(s)

KIM ET AL.

Examiner

Patricia A Patten

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 May 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claims 1 and 3-10 are pending in the application and were examined on the merits.

Applicant's arguments pertaining solely to the previous rejection set forth in the Office Action dated 2/11/03 under 35 USC 103(a) are moot considering these rejections have been removed.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4, after 'folic acid' recites species such as taurine and lecithin which are not 'vitamins or analogues thereof'. Therefore, all of these species lack clear antecedent basis in the claim. As a suggestion to overcome this rejection, Applicant may delete the species including 'taurine' and all species following

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'taurine'. It is noted that a dependant claim which includes 'taurine' as well as all of the species following taurine is already in the case labeled as claim 10.

Claim 9 line 1 recites 'which is'. This phrase lacks clear antecedent basis in the claim. It is suggested that 'which' be replaced by 'wherein said agent' in order to possess clear antecedent basis with regard to claim 8.

Claim 9 remains rejected for the recitation of the term 'essence'. Again, the ordinary artisan would not know exactly what Applicants mean by this term and thus, the metes and bounds of the term are not clearly delineated.

Clarification is necessary.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (US 2002/0114873 A1).

It has recently been found that Lee (US 2002/0114873 A1) disclosed an herbal sauce (syrup/concentrated solution) comprising an aqueous extract of *Acanthopanax cortex* (Siberian ginseng), *Angelicae Gigantis radix* and *Cnidii rhizoma* [0027]. Lee explicitly suggests the incorporation of *Lycii fructus* into the sauce for an additive flavor and aroma [0053] and Claim 13. The purpose of Lee's invention was to add the aqueous extract made to these herbs into food such as cakes, sauces, seafood, vegetables and poultry as examples [0035].

Lee did not specifically teach the particular parts by weight of each individual herbal component, nor did they teach the particular types of grains and vegetables or ingredients such as casein phosphopeptides as Instantly claimed.

One of ordinary skill in the art would have been motivated to have created an herbal sauce from an aqueous extract of *Acanthopanax cortex* (Siberian ginseng), *Angelicae Gigantis radix*, *Cnidii rhizoma* and *Lycii fructus* because the aqueous extract from these herbs could have been beneficially used as a flavorful food sauce. It was clear from Lee that all of the Instantly claimed herbal extracts were suitable for food use, and possessed flavor and aroma.

Although Lee did not specifically teach the particular amounts of each constituent as claimed, the ordinary artisan would have been motivated to have varied the amount of each extract in the final food sauce in order to suit their

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individual taste. Further, creation of varying flavors would have been beneficially marketable to the consumer.

Finally, although Lee did not specifically teach the incorporation of all the Instantly claimed grains or vegetables, the ordinary artisan would have been motivated to add the herbal sauce as taught by Lee to the Instantly claimed vegetables/grains because addition of the herbal sauce taught by Lee to the Instantly claimed vegetables/grains would have imparted an improved flavor and taste to these grains and vegetables. The crux of the invention taught by Lee was for food flavoring; thus, the ordinary artisan would have had a reasonable expectation that the herbal sauce/extract disclosed by Lee would have afforded any food additional flavor and aroma.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

No Claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia A Patten whose telephone number is (571) 272-0968. The examiner can normally be reached on 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on (571) 272-0968. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

02/04/04

Patricia A Patten
Examiner
Art Unit 1654



**PATRICIA PATTEN
PATENT EXAMINER**